Bail Slip

The Accused 9 & 10 (Appellants) were directed to be released on bail by the order of this Court dated 07.01.99 and made in Crl.M.P.No.68/99 in C.A.No.5/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.5 of 1999

1.D.S.Mahi
2.Ram Diya .. Appellants (Accused 9 & 10)

vs.

The Special Police Establishment,
New Delhi. .. Respondent

Prayer: This criminal appeal has been filed against the judgment dated 30.12.1998 in C.C.No.2 of 1997 on the file of the Xth Additional Judge, City Civil Court, Madras.

For Appellants : Mr.Irwin AArdn
For Respondent : Mr.N.Chandrasekaran
Spl. Public Prosecutor of CBI Cases

JUDGMENT

Accused 9 & 10 in C.C.No.2/1997 on the file of X Additional Judge for CBI cases, Chennai, are the appellants herein.

2. The facts of the prosecution case in a nutshell relevant for the purpose of deciding this appeal are as follows:-

2(a) With the avowed object of rehabilitating Ex-servicemen in Civil Life, the Ministry of Defence, Government of India used to allot discarded army vehicles to them at concessional rates on certain conditions, one of the conditions being that the vehicles so purchased at concessional rates should not be resold by the Ex-servicement within a period of three years from the date of purchase.

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2(b) For availing this benefit and concession, the Ex-servicemen should submit an application to the MGO Branch of the Army Head Quarters (in duplicate) through the concerned District Soldiers, Sailors and Airmen Board. In this application the applicant has to give the following undertaking:-

(i) that he is not re-employed in the army/BSF in a combatant capacity;

(ii) that the vehicle will not be resold within a period of three years from the date of its purchase;

(iii) that he has not been allotted any vehicle from the defence Surpluses in the past; and

(iv) that he is not a member of any Co-operative society and necessary financial resources are available with him to purchase the vehicle.

On receipt of the application with due recommendation from the Secretary of the concerned District Soldiers, Sailors and Airmen Board, it will be processed in the 4-H, Section of the Master General of Ordinance Branch, Army Headquarters at New Delhi and allotment order will be issued.

2(c) The allotment order should be normally prepared in quadriplicate. One copy intended for the applicant should be sent by Registered post to the addressee mentioned in the application, unless the allottee himself comes in person to take delivery of the allotment order, in which case his acknowledgment should be obtained in the office copy of the allotment order. One copy of the allotment order should be sent to the concerned vehicle Depot of the State which is nearer to the applicant's address. The third copy should be sent to the concerned Secretary, Soldiers, Sailors and Airmen Board. The fourth copy should be retained as Office copy.

2(d) The Central Vehicle Depot at Avadi, Madras is one amongst such vehicle depots in India where delivery of such Army discarded vehicles can be obtained. They will be kept in the sixth sub depot for being inspected by the allottees and collected by them if they are satisfied. The entry into the vehicle depot is regulated by gatepass.

2(e) A1 is a dealer in Automobile/Spare parts having his business at No.6, Begum Sahib III St., Madras-2. A2 is a dealer in automobile spare parts. A3 is a retired army officer. A4 is a Vehicle Control Officer. A5 worked as the Superintendent of the Vehicle Control Offier. A6 served as the Commandant of the Sixth Sub-Depot. A7 is a Sepoy in the Central Secretariat, Security Force, Ministry of Home Affairs. A8, A9 and A10 served as Clerks in 4-H Section of MGO Branch of the Army Headquarter, New Delhi.

2(f) A1 to A10 are the parties to a criminal conspiracy between 1972 and 1974 at Avadi, Madras. New Delhi and other places to commit certain illegal acts or certain acts which are not illegal by illegal means viz., to unauthorisedly and illegally get army discarded vehicles

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from the CVD, Avadi released at concessional rates, from time to time in favour of Ex.-Servicemen by the MGO Branch of the Army Headquarters New Delhi to enable them to rehabilitate themselves in civil life on condition of their being not resold within three years of the date of purchase by means of cheating abuse of official position by corrupt or illegal means or by otherwise, by forgery and by the use of forged documents as genuine such as applications to the MGO Branch of Army Head Quarters requesting for allotment of vehicles in the name of Ex-Servicemen, applications for change of depot for taking delivery of vehicles, authority letters purported to have been given by the Ex-servicemen allottees authorising others to select/collect vehicles on their behalf the said A7 and A2 amongst them to habitually and systematically induce the ex-servicemen either directly or through intermediaries to part with their discharge certificates, obtain their signatures in blank applications for change of depot, authority letters etc., to enable them to select/collect vehicles from CVD, Avadi allotted for those ex-servicemen as concessional rate paying the concerned ex-serviceman allotttees only certain amounts as premium, A7 amongst them to pursue and induce several ex-servicemen at Delhi to part with their discharge certificate for being handed over to A2 to A7 obtain delivery of vehicles fraudulently from CVD, Avadi, A8 to A10 to part with allotment orders issued in the names of several ex-servicemen in favour of unauthorised persons without adhering to the prescribed regulations and without even obtaining any acknowledgment whatsoever from the concerned ex-servicemen allottees, A3 amongst them to attest the forged signatures of such of those ex-servicemen allottees as genuine in their authority letters sponsored by A2 authorising someone to take delivery of the vehicles from CVD, Avadi. A4 and A6 amongst them to order prompt delivery of the vehicles even prior to the receipt of the copy of the allotment order of the CVD, Avadi from the MGO Branch of the Army Headquarters New Delhi in such of those cases processed by A1 and A2 and A5 amongst them to prepare the necessary MROs and issue vouchers in such cases for facilitating quick delivery of the vehicles and pursuance of the aforesaid criminal conspiracy, in the below mentioned instances, the 4-H Section of the MGO Branch of Army Headquarters was induced to part with allotment orders in the names of certain ex-servicemen on the basis of forged applications for allotment of vehicles and for change of venue purported to have been sent by ex-servicemen allottees and on the basis of false representations and the CVD, Avadi was induced to deliver vehicles in favour of A2 and others sponsored by A2 and A1, on the basis of authority letters containing the forged signatures of the concerned ex-servicemen allottees resulting in pecuniary advantage to them and the engines of many such vehicles after dismandlement of the same were traced to the possession of A1 at his business premises.

2(g) In pursuance of the above said conspiracy for the despatch of the allotment orders, A9, the concerned clerk, had neither obtained the acknowledgment of the concerned allottee nor had he maintained any record to establish the identity of the person to whom they were delivered by him.

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2(h) For the despatch of the aforementioned A.Os, A10, the concerned clerk, had neither obtained the acknowledgment of the concerned allottees nor had be maintained any record to establish the identify of the persons to whom they were delivered by him.

3. A9 was charged under Section 120(B) IPC and under Section 5(2) & 5(1)(d) of Prevention of Corruption Act (2 counts). A10 was charged under Section 120(B) IPC and under Section 5(2) & 5(1)(d) of Prevention of Corruption Act (7 counts).

4. The case was taken on file by the learned Subordinate Judge and after furnishing copies to the accused under Section 207 of Cr.P.C, charges were framed as indicted above and when questioned the accused pleaded no guilty. On the side of the prosecution P.Ws.1 to 65 and Exs.P.1 to P.463 and M.Os.1 to 6 were marked.

5. Out of the above witnesses, the witnesses who are speaking above the involvement of A9 in the above said crime are P.W.4, P.W.6, P.W.31 and P.W.58 only and the witnesses who are speaking about A10 are P.W.1, P.W.6, P.W.35, P.W.51 and P.W.56 only. For the purpose of deciding this case it is enough if we go through the above said witnesses to find out whether the guilt against these appellants viz. A9 & A10 under the above mentioned charges have been proved beyond any reasonable doubt to warrant conviction.

6. P.W.4 would depose that he is working in the Ministry of Defence at New Delhi as Administrative Officer and that on the basis of the report received from CBI to take necessary action against the culprits he placed the entire materials before the Assistant Chief Administrative Officer for sanction. Ex.P.5 is the sanction order to prosecute the accused and that he knows the signature of the sanctioning authority viz. Malgothra and that in Ex.P.5 the said Malgothra has signed.

7. 7 (a) P.W.6 in his evidence would depose that he was working in MGO Branch of Army Headquarters as an Assistant Director and that under him five branches are functioning and out of them one was dealing with release of discarded vehicles to Ex-Armymen and that the above scheme was in vogue to resettle the Ex-Army personnel. He has further deposed to the effect that Ex-Armymen have got a right of choice to select one vehicle from among a lot, subject to a condition that the said vehicle thus selected cannot be soled within three years from the date of purchase. The other condition for allotment is that he should not have own any vehicle on the date of purchase and must also give an undertaking that he will not join in army again. The application will be sent to Army Headquarters office and along with the application the Ex-Armyman shall attach his photo and discharge certificate and that Ex.P.7 is pro-forma application, it will be sent to 4-H Branch for making entries in the relevant registers and thereafter permission will be given and that in the register the date of release of the vehicle purchased were also entered

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into. There are five vehicle depots available and that they are Ordance Truck Group, Pathancode, Central Vehicle depot, Delhi, Central Vehicle depot, Panager, Central Vehicle Depot, Giyaki, Central Vehicle depot, Avadi, and that the applicant shall choose the depot which is nearer to their residence. The price of those vehicles will be fixed by Ministry of Defence twice in a year and only after that the vehicle will be auctioned. The releasing order will be issued to the concerned purchaser through 4-H Department by registered post. Ex.P.9 is the said order passed by the Assistant Director (Ordance) and Ex.P.10 is the letter sent through 4-H Department and that there is not Benz 1210 truck in Army and in none of the letters there was mentioning about Benz 1210. If a vehicle is to be delivered out of turn, there is separate register is maintained for making necessary entries. Ex.P.6 is such a register in which officials have initialed. He has further disposed that during the relevant period of time the Deputy Director of Ordance was Mr.M.K.Vincent and during his absence Mr.H.C.Sharma was incharge of the Deputy Director, Ordance and that A10 was working as a dealer clerk and along with A10, A15, A8 and A9 were also working as dealer clerks.

7(b) He further deposed that in visitors book Ex.P.11 there was no entries for the period of 25.5.1973 to 16.8.1973 and that there was no entries from 6.7.1973 to 8.6.1973 relating to the visit of Sirvasthri Athama Sigh, Ram Saraph, Hari Krishnan, K.S.Rawat, Britham Singh and Burbi Ram. Further during the period from 13.6.1973 to 15.6.1973 there was no entries for the visit of Sarvasri Bai Ram, Seetharam, Ansign, Thulasiram, Manoharkhan, Nobaram, Amarsigh, Haraksigh and Barber Ramchander and also for the period from 16.7.1973 to 7.8.1974 there was no entries for visit of Sarvasthri, Imar Surath Sigh, Kodu Sigh, Hawalter Punekhan, Ramlu Briya, Bord King, Sarath Sigh and Rowalt and also for the period from 7.8.1974 to 9.8.1974 there was no entries for the visit of Sebai Hayit Sigh, Lukram and Pushram and also for the period from 30.7.1974 to 9.4.1974 there was no entries for the visit of Shebai Hayat Sigh, Lukram and Pushram and also for the period from 30.7.1974 to 9.8.1974 there was no entries for the visit of Shebai G.Balakrishna Nair, Hawiltan Joharan and Vincent and also for the period from 9.7.1974 to 9.8.1974 there is no entries for the visit of Subramaniam, A.Raju and Milkichand and VinCent and that Ex.P.11 & P.12 were only in his custody and he handedover the same to the Principal Security Officer of the Police during investigation.

8. P.W.32 is the next witness, according to the prosecution, who speaks about A9 in respect of the charge under Section 5(2), 5(1)(d) of the Prevention of Corruption Act. P.W.32 in his evidence would depose that he joined as a sepoy in the year 1960 in army and he retired from service in the year 1969 and that he knows about Jehinder Sigh Ravath, who had informed him about the selling of army vehicles and that he informed him that he has no money to purchase the same and that he took him to an officer where Sardar Singh was present who had obtained his signature in some of the blank forms and also in some of the unwritten papers and also

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obtained his discharge certificate. He further deposed that Jehinder Sigh gave Rs.150/- to him and he has not enquired about the vehicle and that no allotment order was received by him from the Army Headquarters and later his discharge certificate was written by Jehinder Sigh, Ex.P.166 is his discharge certificate and Ex.P.167, Ex.P.168, Ex.P.169 & Ex.P.170 are his signatures.

9. The prosecution relied on the evidence of P.W.58 for the charges under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act against A9. P.W.59 is Thiru.Harack Sigh, who would depose that he handed over his discharge certificate to the Sub-Inpector of Police and Ex.P.339 is the memo given by them and that Ex.P.340, Ex.P.341, Ex.P.342 and Ex.P.343 to Ex.P.348 are his signatures and that he has not purchased any old vehicle from army.

10. The prosecution relied on the evidence of P.W.5 against A10 for an offence under Section 120(B) IPC, and the evidence of P.W.35, 37, 51, 56 & 57 for the offence under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act (8 counts). P.W.5, Thiru.Balbeer Sigh, is an Assistant in the Defence Department. He has submitted a requisition letter received from CBI to prosecute against A10, before Thiru.T.N.Rina, The Chief Army Officer, who has given sanction for prosecution under Ex.P.6 against A10.

11. The evidence of P.W.6 has been dealt with by me in the earlier paragraphs which shows that A10 was also working as a dealer clerk in Ordance Department along with A5, A8 and A9.

12. The prosecution relied on the evidence of P.W.35,Thiru.S.K.Guptha, who would depose that he is working as a clerk in a export and import company at New Delhi. During 1950 to 1959 he was working in Indian Air Force and his discharge certificate is Ex.P.175 and that he worked again in the army from 1962 and 1965 and at that time one Jaishriram was working with him and as per the information given by Jaishriram, he came to know that vehicles are being sold to Ex-Army Personnel under concessional rate. He requested Jaishriram to get a Motor cycle for him under the above scheme and as requested by him, he handed over his discharge certificate to him and when he asked him some two months latter, he informed that he has already applied for the same and an allotment order will be issued to him soon and that he received an allotment order under Ex.P.176 and that in the said order he was allotted a lorry weighing 3 tones and when he went to Delhi and enquired about this he could not enter into the said department without a discharge certificate and the price of the lorry was informed to him as Rs.25,000/-. So he returned and again contacted Jaishriram and asked for the return of his discharge certificate. The application for return of discharge certificate are Ex.P.177 to 183 and they were given by him and they do not contain his signature. Ex.P.184 to 190 are his leave applications.

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13. P.W.51,Thiru.K.S.Rawat, would depose that he was working in army from 1944 to 1955 and he was discharged in the year 1959. A7 also worked with him and Ex.P.265 is the discharge certificate of the year 1972 and that he made a requisition to A7 to get a vehicle for him and in this connection he took his discharge certificate, but for nearly six months he has not obtained any application for him. He would depose that later he found his discharge certificate in his house and there was no allotment order received by him and that he never went to NGGO Branch at the Army Headquarters and that he has not given any authorisation letter also and that he does not know anything about Agithsing and that he has not received any vehicle indented for army personnel and that he does not know Sardargi @ Ajithsigh. He would deny the signature contained in Ex.P.266, Ex.P.266(a), Ex.P.267, Ex.P.267(a), Ex.P.268, Ex.P.268(a) Ex.P.269 and Ex.P.269(a) as to they do not belong to him. He would admit that the specimen signature in Ex.P.270 belong to him and that the signature contained in Ex.P.271 to Ex.P.275 belong to him and that Ex.P.265 is in-discharge certificate which was handed over to the Investigating Officer. Ex.P.276 is the acknowledgment.

14. P.W.56, Thiru.Sriratjsigh, would depose that he worked in the defence headquarters and at that time he has acquaintance with A7 and after knowing that vehicles were allotted to Ex-Army Personnel he applied for the same and after getting an allotment order, he went to condonment Delhi where the army vehicles were parked and since he does not like any of the vehicles parked there, he applied for the extension of time of allotment order and during 1972-1973 once again he visited the said godown, but no vehicle was up to his taste, and then he returned to his certificate to A7 who promised to meet the higher officials to make arrangements to get a vehicle for him and two months later he returned the certificate by saying that he cannot help in this matter. He would deny that Ex.P.297-letter does not contain his signature and that he has not given any authorization letter Ex.P.298 and the signature in Ex.P.298 does not belong to him and Ex.P.299-letter was also not given by him. He would depose that he has not taken delivery of any of the vehicles. He further deposed that Ex.P.301 to Ex.P.302 are his specimen signatures and Ex.P.303 to Ex.P.306 are also contained his signature and that he handed over his discharge certificate to the Inspector of CBI and Ex.P.307 is the memo for having handed over his discharge certificate to the investigation officer.

15. P.W.57, Thiru.Gurthalsingh, in his evidence would depose that he is residing at Hariyana State and he was working in the Army and during 1959 he got discharged and he knows A7 and he handed over his discharge certificate to A7 for the purpose of purchasing a lorry, but he has not received any reply, but got back the printed form and he has not received any letter from Army Headquarters and that during 1974 discharge certificate was handed over to him by A7 and that Ex.P.308 to Ex.P.312 do not contain his signature and Ex.P.313 to Ex.P.332 are his specimen signatures.

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16. P.W.37, Thiru.Gundansigh, in his evidence would depose that he served in Army from 1940 to 1946 and that he knows Ragunathasingh, who was working in the defence department, who during 1973 met him and informed about the scheme of allotting vehicles to Ex-Army Personnel and requested him to apply for the same and that he informed that he has no sufficient money to purchase the same and that he demanded his discharge certificate and he handed over his discharge certificate to him, but after he could not meet Ragunathasigh, but the discharge certificate was returned to him by post. He would depose that Ex.P.191, to 197 do not contain his signature and that he has not applied for any allotment for any vehicle and that Ex.P.196 & P.197 are his specimen signatures and that they are genuine.

17. P.W.58 is the Investigation Officer.

18. When the incriminating circumstances were put to A9 & A10 they denied their complicity with the crime. After going through the oral and documentary evidence, the learned trial Judge had convicted A9 & A10 under Section 120(B) IPC and under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act (two counts) for A9 and (5 counts) for A10 and sentenced to under go six months RI under Section 120(B) IPC each and two years RI and a fine of Rs.200/- each under each counts under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act. Aggrieved by the findings of the learned trial Judge, A5 & A10 have preferred this appeal.

19. Now the point for determination in this appeal is whether the charges under Section 120(B) IPC and under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act have been proved beyond any reasonable doubt against A9 & A10?

20. The Point:- The prosecution has relied on P.W.4, P.W.32, P.W.58 against A9 to prove the offence under the above sections of law. The prosecution ha relied on the evidence of P.W.5, P.W.37, P.W.57 and P.W.35 to prove the guilt under the above provisions of law as against A10. Neither P.W.4 nor P.W.5 speak about the conspriracy of A9 & A10 in the offence levelled against them. Neither P.W.32 nor P.W.58 speak about the charge under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act to implicate A9 into the said offence to warrant conviction under Section 5 (2), & 5(1)(d) of the Prevention of Corruption Act. Likewise neither P.W.57 nor P.W.37, P.W.56, P.W.51, P.W.3 implicate A10 with the offence under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act to warrant conviction under the above said provisions of law. The learned special public prosecutor for CBI cases also fairly concedes that none of the above witnesses have implicated A9 & A10 into the crime under Section 120(B) IPC and Under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act. Learned Special Public Prosecutor for CBI cases also fairly admitted that the charges levelled against A9 & A10 as indicated above are not proved beyond any reasonable doubt. Under such

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circumstances, the conviction and sentence against A9 & A10 under Section 120(B) IPC and under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act passed by the trial Court is not sustainable under law since there is not iota of evidence let in by the prosecution to prove the guilt against them to warrant conviction under Section 120(B) IPC and under Section 5(2) & 5(1)(d) of the Prevention of Corruption Act. Point is answered accordingly.

21. In the result, the appeal is allowed and the conviction and sentence against A9 & A10 in C.C.No.2 of 1997 on the file of the Xth Additional City Civil Court, Madras. Are set aside and they are set at liberty. Bail bond stands cancelled against A9 & A10. The fine amount paid by A9 and A10 are to be returned to them.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1. The Xth Addl. Judge for CBI Cases (Spl.Judge)
City Civil Court, Chennai.

2. -Do-Thro' The Principal Sessions Judge,
City Civil Court, Chennai.

3. The Superintendent,
Central Prison, Vellore.

4. Mr.N.Chandrasekar,
Special Public Prosecutor (CBI Cases)
Madras.

5. The Special Police Establishment,
New Delhi.

2 cc To M/S.Pais, Lobo & Alvares, Advocate, SR.4998.

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